(b)(6)

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

DATE: APR 0 6 2015 Office: TEXAS SERVICE CENTER FILE:

IN RE: Petitioner:
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at http://www.uscis.gov/forms for the latest information on fee, filing location, and other requirements.** *See also* 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the immigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. We will dismiss the appeal.

The petitioner seeks classification under section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. Although the petitioner did not complete Part 6 of the Form I-140, Immigrant Petition for Alien Worker, information in the record indicates that the petitioner seeks employment as an educator. The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner has not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

On appeal, the petitioner submits a brief and additional evidence. Although the petitioner indicated on Form I-290B that a "brief and/or additional evidence will be submitted to the AAO within 30 calendar days of filing the appeal" and reiterated in the appellate letter that a separate brief would be submitted, as of today, approximately ten months after the petitioner filed the appeal, we have not received any additional submissions.

I. LAW

Section 203(b) of the Act states, in pertinent part:

> (2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. –
>
> > (A) In General. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of Job Offer –
> >
> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The record reflects that the petitioner qualifies as a member of the professions holding an advanced degree. The sole issue in the instant petition is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

Neither the statute nor the pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise...." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

A supplementary notice regarding the regulations implementing the Immigration Act of 1990, P.L. 101-649, 104 Stat. 4978 (Nov. 29, 1990) (IMMACT90), published at 56 Fed. Reg. 60897, 60900 (Nov. 29, 1991), states, in pertinent part:

> The Service believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

In re New York State Dept of Transportation, 22 I&N Dec. 215, 217-18 (Act. Assoc. Comm'r 1998) (*NYSDOT*), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, a petitioner must establish that she seeks employment in an area of substantial intrinsic merit. *Id.* at 217. Next, a petitioner must establish that the proposed benefit will be national in scope. *Id.* Finally, the petitioner seeking the waiver must establish that she will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications. *Id.* at 217-18.

Although the national interest waiver hinges on prospective national benefit, the petitioner must establish that her past record justifies projections of future benefit to the national interest. *Id.* at 219. The petitioner's assurance that she will, in the future, serve the national interest cannot suffice to establish prospective national benefit.

Further, assertions regarding the overall importance of a petitioner's area of expertise are relevant, but cannot by themselves suffice to establish eligibility for a national interest waiver without a review of the petitioner's own qualifications. *Id.* at 220. Moreover, a "unique and innovative set of skills, knowledge and background" does not inherently meet the national interest threshold. The issue of whether similarly-trained workers are available in the United States is an issue under the jurisdiction of the U.S. Department of Labor through the alien employment certification process. *Id.* at 221.

II. ANALYSIS

The petitioner filed the Form I-140 petition on April 19, 2013. The petitioner submitted copies of the following documents:

1. academic credentials;
2. teaching license;
3. affiliation with the
4. letters of appreciation and certificates of appreciation, including a certificate for a presentation at in Virginia;
5. an abstract;
6. a course outline and lesson plan;
7. past employment evaluations;
8. employment verification letters; and
9. evidence of additional trainings and recertification points.

The petitioner has established that her work as a teacher is in an area of substantial intrinsic merit. It remains, then, to determine whether the proposed benefits of the petitioner's work will be national in scope and whether she will benefit the national interest to a greater extent than an available U.S. worker with the same minimum qualifications.

NYSDOT provides examples of employment where the benefits would not be national in scope:

> For instance, pro bono legal services as a whole serve the national interest, but the impact of an individual attorney working pro bono would be so attenuated at the national level as to be negligible. Similarly, while education is in the national interest, the impact of a single schoolteacher in one elementary school would not be in the national interest for purposes of waiving the job offer requirement of section 203(b)(2)(B) of the Act. As another example, while nutrition has obvious intrinsic value, the work of one cook in one restaurant could not be considered sufficiently in the national interest for purposes of this provision of the Act.

Id. at 217, n.3. In the present matter, the petitioner has not shown the benefits of her impact as a teacher beyond her own students and, therefore, that her proposed benefits as a teacher are national in scope. The petitioner initially indicated that, in addition to teaching, she proposes taking the Virginia program through which she teaches nationwide. Subsequently, she proposes to develop new health curricula based on her concern with the implications of over the counter emergency contraception. While we do not question the merit of the petitioner's proposals, her indication that her proposals could have a national impact does not sufficiently demonstrate the national scope of her proposed benefit. The record does not establish that the proposed employment is within a framework that typically has a national impact, such as the proper maintenance of bridges and roads already connected to the national transportation system. *NYSDOT,* 22 I&N Dec. at 217. In this case, Virginia implemented the program the petitioner initially sought to implement nationwide in the 1970s and the record contains no evidence that other states have expressed an interest in this program and/or do not already have a similar program. As explained in the letter from Management and Program Analyst at the U.S. Department of Education, curriculum development and course content are solely the responsibility of state and local education officials and the

petitioner has not demonstrated the existence of a national framework for health curricula or asserted that she proposes to work as a curriculum consultant advising state and local education officials nationwide. Accordingly, the petitioner has not established that the proposed benefits of her work will be national in scope.

With respect to the petitioner's personal track record, academic records, occupational experience, professional certifications, salary information, membership in professional associations, and recognition for achievements are elements that can contribute toward a finding of exceptional ability. *See* 8 C.F.R. § 204.5(k)(3)(ii)(A)-(F). *See* section 203(b)(2)(B) of the Act. The regulation at 8 C.F.R. § 204.5(k)(2) defines "exceptional ability" as "a degree of expertise significantly above that ordinarily encountered" in a given area of endeavor. By statute, aliens of exceptional ability are generally subject to the job offer/labor certification requirement; they are not exempt by virtue of their exceptional ability. *NYSDOT*, 22 I&N Dec. at 218, 222. Therefore, whether a given individual seeks classification as an alien of exceptional ability, or as a member of the professions holding an advanced degree, that individual cannot qualify for a waiver just by demonstrating a degree of expertise significantly above that ordinarily encountered in her field of expertise. The national interest waiver is an additional benefit, separate from the classification sought, and therefore eligibility for the underlying classification does not demonstrate eligibility for the additional benefit of the waiver. Although significant awards may be relevant to the question of the petitioner's impact and influence on her field, the petitioner does not assert and has not established that she is the recipient of any awards.

As previously stated, the petitioner's academic credentials are sufficient to establish that she holds an advanced degree. The certificates of participation and attendance for training courses and seminars relating to her professional development demonstrate that the petitioner has pursued training to increase her professional knowledge and to improve as a teacher. Such pursuits are beneficial to her ability to succeed in her career, but there is nothing inherent in these activities to establish eligibility for the national interest waiver. Similarly, the letters of appreciation and certificates of appreciation from local colleagues and organizations, including the certificate regarding the petitioner's local presentation at demonstrate that the petitioner is appreciated by her local colleagues. They do not, however, have more than local, regional or institutional significance, and, accordingly, they do not establish eligibility for the national interest waiver.

In addition, the petitioner submitted past evaluations, an abstract, and a course outline with an accompanying lesson plan. These documents demonstrate that the petitioner is an experienced teacher who excels in the classroom and has creative ideas. The petitioner, however, did not demonstrate how the evaluations or the course outline and lesson plan reflect that she has impacted the field to a substantially greater degree than other similarly qualified educators and how her specific work has had significant impact outside of the institutions where she has taught. The unpublished abstract proposes that "[t]he programs offered at under the leadership of Dr. be "adapted and implemented in other school districts." has been in existence since the 1970s. The abstract does not explain the petitioner's role

in the programs offered at or the impact of the programs on the field. The petitioner has not provided any evidence to establish how the program has performed in Virginia since implementation in the 1970s or documentation that other states have taken notice of the program. Further, while the petitioner is an experienced teacher, she has not provided any evidence to establish that she has a successful track record of introducing a novel program nationwide, the benefit she proposes will be national in scope, or to document her experience working as a curriculum consultant.

Regarding the petitioner's affiliation with the the petitioner did not submit any evidence to demonstrate the significance of her one-year membership and does not explain how the submitted documentation demonstrates her influence on the field as a whole. Notably, the affiliation includes 14 of the petitioner's students.

The record lacks specific examples of how the petitioner's work has influenced the field on a national level. At issue is whether this petitioner's contributions in the field are of such significance that she merits the special benefit of a national interest waiver, a benefit separate and distinct from the visa classification she seeks. A petitioner must demonstrate a past history of achievement with some degree of influence on the field as a whole. *Id.* at 219, n. 6.

The director issued a request for evidence (RFE) on June 20, 2013. As stated in the director's request, "[t]he petitioner must establish that the beneficiary has a past record of specific prior achievement with some degree of influence on the field as a whole" and "must persuasively demonstrate that the national interest would be adversely affected if a labor certification were required."

In response to the director's RFE, the petitioner submitted an "Outline of Proposal" and identical letters submitted to President Barack Obama, Virginia State Senator Janet Howell, Secretary Of Education Arne Duncan and Virginia Governor Robert McDonnell.

The letters, all of which are dated July 25, 2013, are, as stated by the director in his decision, "dated after the filing of the Form I-140." Eligibility must be established at the time of filing. 8 C.F.R. § 103.2(b)(1), (12); *Matter of Katigbak,* 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). A petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *Matter of Izummi,* 22 I&N Dec. 169, 175 (Assoc. Comm'r 1998). That decision further provides, citing *Matter of Bardouille,* 18 I&N Dec. 114 (BIA 1981), that USCIS cannot "consider facts that come into being only subsequent to the filing of a petition." *Id.* at 176. Regardless, the director also found that "[w]riting a letter...is not restricted...[and] is not indicative of having some degree of influence in the field." Similarly, according to the petitioner's undated "Outline of Proposal," she prepared it in response to a July 24, 2013 blog post. Further, the petitioner's proposal addresses for the first time education regarding emergency contraceptive pills and makes no reference to the programs discussed in the petitioner's abstract she submitted with the initial petition. Finally, the petitioner did not submit any evidence to establish that her abstract and proposal have

been implemented or garnered interest beyond Virginia and, therefore, they do not establish a past record of influence.

On appeal, the petitioner submitted a personal statement, a thank you letter from Ms. at the U.S. Department of Education acknowledging the petitioner's letter to Secretary Duncan, along with a copy of the petitioner's response to Ms. letter, and a thank you letter from President Obama acknowledging receipt of the petitioner's letter. These letters, acknowledging receipt of the petitioner's proposal, do not show that her work has affected the field. As previously stated, the petitioner's unsolicited letters addressed to government officials, regardless of the recipient, are not evidence of the petitioner's impact on the field. In addition, the responses only acknowledge receipt of the petitioner's letters. Regardless, the letters and the subsequent responses, cannot be considered here as they occurred after the date of filing. *Id.*

The petitioner asserts that her "proposed project justifies projections of future benefit to the national interest and has some degree of influence on the field" because of the support of the White House for the General arguments or information regarding the importance of a given field of endeavor, or the urgency of an issue facing the United States, cannot by themselves establish that an individual benefits the national interest by virtue of engaging in the field. *NYSDOT*, 22 I&N Dec. at 217. Such assertions and information address only the "substantial intrinsic merit" prong of *NYSDOT*'s national interest test. None of the submitted documents establish that the petitioner's specific work as a teacher has affected the field as a whole and she has no documented experience developing and introducing new curriculum beyond where she teaches. The petitioner has not established that her track record designing new educational programs for national implementation or even teaching justifies an exemption from the job offer requirement that, by statute, normally attaches to the immigrant classification that she seeks.

The petitioner has not established a past record of achievement at a level that would justify a waiver of the job offer requirement. The petitioner need not demonstrate notoriety on the scale of national acclaim, but the national interest waiver contemplates that her influence be national in scope. *NYSDOT*, 22 I&N Dec. at 217, n.3. More specifically, the petitioner "must clearly present a significant benefit to the field of endeavor." *Id.* at 218. *See also id.* at 219, n.6 (the individual must have "a past history of demonstrable achievement with some degree of influence on the field as a whole").

A plain reading of the statute indicates that engaging in a profession (such as teaching) does not presumptively exempt such professionals from the requirement of a job offer based on national interest. Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given profession, rather than on the merits of the individual alien. On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

We will dismiss the appeal for the above stated reasons. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act,

8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, the petitioner has not met that burden.

ORDER: The appeal is dismissed.